

within its own network.¹⁴³ The trunk blockage data that Verizon PA presented in this proceeding indicate that Verizon PA provided interconnection that is equal in quality to the interconnection it provides its own network. Additionally, Verizon PA's data indicate that Verizon PA is providing a better grade of service in the aggregate for CLEC-dedicated final trunk groups than for its own common final trunk groups.

During the commercial availability period (and up to April 2001), with one exception, Verizon PA demonstrated continuous improvement in its ability to pass the metrics relating to its interconnection trunk performance. For the one exception, Verizon PA slipped below the performance standard for PR-1-09 "Average Interval Offered – Total > 192 Forecasted & Unforecasted for April 2001," having met the standard for the four out of the preceding five months.¹⁴⁴

Verizon PA's performance during the commercial availability period and April for PR-1-09 has been as follows:

Month	Analog Performance	Performance to CLECs
Jan 2001	13.61 days	11.89 days
Feb 2001	12.83 days	12.52 days
March 2001	10.35 days	11.90 days
April 2001	10.87 days	13.11 days

While these data indicates some differences between the Verizon PA analog and performance to CLECs, we note that the CLEC service was never less than the service

¹⁴³ KPMG Consulting did not review any metrics data relating to interconnection trunks during the commercial availability period.

¹⁴⁴ The Commercial data is drawn from the C2C aggregate reports that Verizon PA files each month with the PAPUC on, or about the 25th of the month following the month for which the data is reported. E.g., January 2001 data was reported on February 25, 2001; February 2001 data was reported March 26, 2001, etc. The allocation of various metrics was set out by Verizon PA in its Measurement Declaration Attachment 403 revised dated 4/18/01.

interval that Verizon PA provided itself at one time or another. Accordingly, the situation as to this single metric should not impede a favorable 271 recommendation from the PAPUC given that the other metrics demonstrate that, over time, Verizon PA's performance has met the statutory requirement. In our view, an aberrant event in a discrete time period does not indicate systemic non-compliance. The existence of large penalties for non-compliance further reinforces our determination.

We also determine that Verizon PA provides interconnection on terms and conditions that are just, reasonable and nondiscriminatory in so far as Verizon PA's data indicate that it provided parity with regard to average installation time.

b. Collocation

For purposes of section 271 authorization, we determine that Verizon PA has demonstrated that its collocation offering satisfies the requirements of section 271 and 251 of TA-96. The multiple collocation options and alternatives offered by Verizon PA are essentially, with minimal variations, identical to the options offered by Verizon New York and Verizon Massachusetts and already approved by the FCC in prior section 271 decisions. Likewise, the standard operating procedures used by Verizon PA to provide collocation are essentially the same operating procedures used by Verizon NY. Verizon PA's data also indicate that Verizon PA meets the requirements of the PAPUC for provisioning collocation arrangements and that it provisions collocation in timely manner, consistent with the intervals established in the Global Order. We note that Verizon PA and Sprint are working to resolve Sprint's issue regarding Verizon PA providing a CFA to collocation arrangements prior to turning it over to Sprint.

Additionally, on June 8, 2001, the PAPUC entered a final order outlining the terms and conditions for provisioning collocation arrangements at Docket Nos. R-00994697 and R-00994687C0001. We believe that this order addresses many of the concerns

raised by Conectiv by requiring Verizon PA to meet collocation intervals shorter than the FCC has determined to be required by section 271 in the Massachusetts and New York proceedings. The PAPUC directed Verizon PA that within 30 days of the entry of the order, it must file a tariff or tariff supplement amending Tariff Pa. P.U.C. 218, to be effective on 1-day's notice. The tariff or tariff supplement is to be consistent with the determinations contained within the order relating to provisioning intervals, forecasts, performance incentives and penalties, exemption petitions, space reservation, reclamation of space, space termination and advance notice for competitive carriers entry to premises containing Cageless Collocation - Open Environment collocation arrangements. We have also directed the parties to participate in a collaborative to address the issue of cable – only augment issues. However, by letter dated June 15, 2001, we have deferred initiation of that collaborative pending the results of the parties' further efforts to adopt a stipulation to abide by the results of the pending New York collaborative regarding augment intervals in Pennsylvania as well.

We also determine that Verizon PA provides interconnection at all technically feasible points. We find that Verizon PA has existing interconnection agreements that permit competing carriers to interconnect at a single point on Verizon PA's network. Verizon PA also demonstrates that it has approved interconnection agreements that spell out readily available points of interconnection, and provides a process for requesting interconnection at additional, technically feasible points. Accordingly, the arguments raised by MCIW and Sprint are more appropriately to be addressed in arbitration proceedings.

c. Field Observations

KPMG Consulting assisted the PAPUC in its commercial availability period review by looking at interconnection trunks provisioning documentation and procedures

through limited reviews and observations of selected provisioning processes.¹⁴⁵ KPMG Consulting 5/31/01 Final Provisioning Rep. at 3-4.

KPMG Consulting found that Verizon PA demonstrated knowledge its internal Method and Procedure documents and the provisioning process. KPMG Consulting 5/31/01 Final Provisioning Rep. at 18. KPMG Consulting reviewed *NOCIL 9909-009, Reaffirmation of the Customer Not Ready (CNR) Policy* and concluded that the documentation does not provide time intervals on any of the flow charts. Time intervals for Firm Order Completion (FOC), Wired Office Test (WOT), and Due Date (DD) are negotiated when an ASR is received. Verizon PA needs three – five business days to insure that a document trail exists. KPMG Consulting 5/31/01 Final Provisioning Rep. at 18.

At *Due Date - 3*, Verizon PA contacts the CLEC to confirm the due date. If the CLEC will not be ready on the due date, a new due date is negotiated at an interval of greater than five additional business days. At *Due Date +1*, Verizon PA again contacts the CLEC. If the CLEC is not ready, Verizon PA requests a Supplemental ASR either to change the due date for the requested service or to cancel the requested service. If a supplement is not received in ten calendar days, the due date is adjusted out 21 calendar days, and a letter is sent to the CLEC requesting a change or cancellation. At the expiration of *Due Date + 31*, if a supplement has not been received, the ASR is

¹⁴⁵ Interconnection Trunks are required to connect a CLEC central office or collocation to an ILEC central office when calls do not originate and terminate within a single central office. A routing dial plan is used to interpret dialed digits and route the call to a selected interconnection (IC) trunk to the desired central office. IC Trunks can be 2-wire or 4-wire, analog or digital depending on the trunk design requirements. Three methods of interconnection are one-way incoming, one-way outgoing or two-way. Additionally, trunks can be configured as Direct or Tandem, where Direct trunks connect from one central office to another and Tandem trunks are switched through an intermediate or Tandem central office. Signaling requirements are designed according to the connecting equipment. A CLEC must identify the type and quantity of trunks required on the Access Service Request (ASR) when ordering trunks. ASRs are the forms used to order access services such as trunks and hi-cap services. KPMG 5/31/01 Final Provisioning Rep. at 8-9.

cancelled, and the facilities are released. The CLEC is notified of this action by letter.
KPMG Consulting 5/31/01 Final Provisioning Rep. at 18.

Interconnection trunk orders are generated following the submission of a CLEC's ASR. This ASR is initially sent to the Carrier Access Group (CAG) for the design and activation of the trunking facilities. At the same time as the ASR is progressing through the design and turn up phase, Trunk Integrated Record Keeping System (TIRKS) builds a word document and loads the data into Work Force Administration (WFA)-C. A WFA/DI order is created and assigned to a technician in the Test and Turn up center. KPMG Consulting 5/31/01 Final Provisioning Rep. at 18. The CAG coordinates with the Test and Turn up technician a joint call with the CLEC to perform acceptance testing. Completion of the provisioning process is noted in the WFA-C OSS Log, which remains active for 30-45 days. KPMG Consulting 5/31/01 Final Provisioning Rep. at 18.

KPMG Consulting was not able to observe any actual interconnection trunk installations due to a lack of orders.

5. Conclusion

We conclude that Verizon PA has demonstrated compliance with Checklist item 1 of section 271.

B. Checklist Item 2 -- Access to UNEs

1. Pricing of UNEs

Section 271(c)(2)(B)(ii) requires Verizon PA to provide nondiscriminatory access to UNEs. 47 U.S.C.S. § 271(c)(2)(B)(ii). To ensure nondiscriminatory access, Verizon PA must charge CLECs just and reasonable rates to use its network elements. 47

U.S.C.S. § 252(d)(1). State commissions determine the price that will be charged for these network elements. *Id.* There are two sets of UNE rates that need to be analyzed in the context of Verizon PA's 271 application.¹⁴⁶ The first set of rates involves certain UNEs that were established in 1999 by the PAPUC in its Global Order. (See Appendix A). The second set of rates involves additional network elements that were unbundled as a result of the FCC's UNE Remand Order and the PAPUC's Global Order. (See Appendix B). Rates for these additional UNEs were established by our Further UNE Pricing Interim Order adopted May 24, 2001, and they will become final rates upon PAPUC review and approval of Verizon PA's Compliance Filing.¹⁴⁷

a. UNEs Priced by PAPUC's Global Order

(1) Description of Checklist Sub-issue

Rates for UNEs were set by the PAPUC's Global Order and are currently in place pursuant to Verizon PA's Tariff No. 216. (See Appendix A.) The rates were set by using a TELRIC-type cost methodology from the PAPUC's prior UNE pricing proceeding, MFS - Phase III, and modifying the inputs. The issue regarding these rates is whether they conform to TELRIC principles or whether the PAPUC made clear errors in factual

¹⁴⁶ Billing is an important aspect of the competitive marketplace. The billing discussion on the record came up in the context of Checklist items 2 and 14 and OSS and metrics. For our full discussion of the billing issues, see the OSS and Metrics, Commercial Data, and Remedies segments of this Consultative Report. As explained in more detail in those segments, we believe that Verizon PA's commitment to electronic bills, coupled with new incentives, is sufficient to for the purposes of a section 271 review. Briefly, Verizon PA needs to issue timely, accurate, auditable bills in order to be paid and to give its customers, the CLECs, a meaningful and realistic opportunity to assess their operational costs. It is undisputed that electronic billing is an essential component of the billing process as was established on the record. It is further recognized that Verizon PA does now provide an electronic bill as the bill of record, and is committed to improving that electronic bill in the near future. Further, this commitment is bolstered by strong incentives (*i.e.*, increased remedies) imposed by the PAPUC for a failure to do so. 3/7/01 Tr. at 137 and *passim*; 4/25/01 Tr. at 97-98, 102-107, and *passim*; 6/6/01 Sec Ltr.

¹⁴⁷ Further Pricing of Verizon PA's UNEs, Docket Nos. R-00005261 and R-00005261C001 at ordering paragraph no. 1 (Order entered May 24, 2001) ("Further UNE Pricing Interim Order").

findings so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.

(2) Standard of Review

According to section 252(d)(1) of TA-96, pricing of network elements shall be non-discriminatory, shall be based on the cost of providing the network element, and may include a reasonable profit. The FCC has determined that prices for UNEs must be based on the TELRIC of providing those elements.¹⁴⁸ Therefore, the issue is whether the UNE prices set by the PAPUC in its various UNE orders , particularly the Global Order, are TELRIC-based.

In reviewing this question, the FCC requires only that the state commission follow basic TELRIC principles when setting UNE rates.¹⁴⁹ The FCC will reject an application “only if basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.” The FCC will not conduct a de novo review of a state’s pricing determination. The FCC will consider an applicant to be in compliance with this checklist item even where the state commission generally followed basic TELRIC principles but used other unreasonable key inputs or methodologies which did not ensure that the adopted UNE rates were TELRIC-compliant.

¹⁴⁸ Verizon MA 271 Order at ¶ 16.

¹⁴⁹ Id. at ¶ 20.

(3) Summary of the Evidence Before the PAPUC

Verizon PA asserts that where it was directed by the Global Order to charge specific rates for UNEs, it is charging those rates and those rates are TELRIC-based.¹⁵⁰

AT&T and MCIW assert that because the PAPUC's Global Order relied on the MFS - Phase III methodology, it did not establish rates for Verizon PA's UNEs in accordance with TELRIC. They argue that without any TELRIC-based rates for UNEs in Pennsylvania, Verizon PA is not in compliance this checklist item. In support of this position, AT&T relies on the following bolded sentence in the Global Order at page 69:

MCIW presented testimony by Mr. Donald Laub, which the Commission finds persuasive. Laub testified that in general Total Element Long Run Incremental Cost (TELRIC)-based rates fully compensate the incumbent for its investment and for any related overhead. Furthermore, if UNEs prices are set at TELRIC-based rates, the ILEC cannot use the difference between TELRIC and the UNE rate to strategically underprice new entrants or to otherwise unfairly raise their rival's costs. The empirical evidence indicates that the existing rates in Pennsylvania are not set at the TELRIC level. The rates for unbundled loops and local switching in Pennsylvania (including the switch port and switching per minute rate elements) are far in excess of rates that exist in other states and the FCC's Proxy Rates.

(Footnotes omitted)

AT&T argues that this paragraph represents the PAPUC acknowledgement that its MFS - Phase III Order rates were not TELRIC-based.¹⁵¹ Further, the CLECs argue, if Verizon PA views the Global Order as merely a clarification of the MFS - Phase III Order rates, then none of the rates in the Global Order are TELRIC-based.

¹⁵⁰ Cklist Dec. at ¶ 116.

¹⁵¹ AT&T 4/18/01 Comments at 12.

MCIW uses a different argument in support of its position that there are no TELRIC-based rates in Pennsylvania. MCIW starts with the assertion that the UNE prices in Pennsylvania, as set by the Global Order, were derived from the cost model relied upon by the PAPUC in its MFS - Phase III Order. In response to the MFS - Phase III Order, MCIW appealed the rates and a federal district court concluded that Verizon PA's MFS - Phase III Order rates should be remanded to the PAPUC for further proceedings.¹⁵² Therefore, MCIW concludes that the rates set forth in the Global Order that relied on the cost model adopted in the MFS - Phase III Order must not be TELRIC-based.¹⁵³

(4) Discussion

The PAPUC's Global Order modified two key inputs used in the MFS - Phase III proceeding and established new permanent UNE rates for Pennsylvania in full accord with TELRIC pricing principles. The PAPUC reexamined and subsequently modified the original TELRIC rates, established in our MFS - Phase III order, in its subsequent Global Order. The Global Order refined the pricing methodology of the MFS - Phase III Order to establish refined and lower TELRIC rates that better reflected the PAPUC's increasing expertise with TELRIC pricing, were more conducive to competition, and which better responded to the CLECs concerns.

The PAPUC's Global Order reduced UNE rates by mandating a 17% reduction in Verizon's imputed cost of capital from 11.9 to 9.83%. The PAPUC also imposed a

¹⁵² MCI Telecommunications Corp. V. Bell Atlantic-Pennsylvania Inc., No. 97-1857 (M.D. Pa. June 30, 2000), appeal pending, No. 00-2257 (3rd Cir., filed July 28, 2000).

¹⁵³ MCIW 2/12/01 Comments at 15.

significantly higher fill factor of 85%. Both reductions were applied on a going-forward basis. Global Order at 73-76.

The PAPUC's 9.83% cost of capital rate is a final rate that has not been modified since our Global Order. This approach has been the PAPUC's guiding principle in the establishment of UNE rates. The PAPUC's cost of capital rate is 19% lower than the 12.16% cost of capital rate endorsed in the FCC's Massachusetts decision. Moreover, the PAPUC's fill factor of 85% is 10% higher than the highest fill factor of 75% used by other states and endorsed by the FCC.

Consequently, the PAPUC believes that the paragraph relied upon by AT&T in support of its claim that we admit there are not TELRIC rates in Pennsylvania is taken out of context and contrary to the facts. The sentence relied upon by the AT&T to assert that there are no TELRIC-based rates in Pennsylvania is taken out of context and misconstrued. That sentence recognizes MCIW's position and the PAPUC's agreement agreed that the MFS - Phase III Order UNE rates were not set at the appropriate TELRIC level due to the use of improper input elements. Accordingly, the PAPUC found that the use of an 11.9% cost of capital was no longer appropriate and adopted a lower 9.83% cost of capital on a going forward basis. Global Order at 73-76. The PAPUC also adopted a new fill factor of a higher 85% on a going-forward basis.¹⁵⁴ However, the Global Order does not stand for the proposition that the cost methodology used in MFS - Phase III is inconsistent with TELRIC pricing principles.

With respect to MCIW's exaggerated assertion that the district court has declared the MFS - Phase III methodology as illegal, the PAPUC notes that the court did not

¹⁵⁴ The input factors adopted in the Global Order compare favorably to the factors approved by the FCC in the Verizon PA application for section 271 authority in Massachusetts. In that order, the FCC approved of a cost of capital of 12.16%. Verizon MA 271 Order at ¶ 38. Further, the FCC accepted Massachusetts fill factor of 40% while noting that in other section 271 applications the FCC has adopted fill factors ranging from 50 to 75%. Id. at ¶ 39.

actually analyze the cost methodology. Rather, the district court based its decision on the fact that the PAPUC's characterized the methodology as TSLRIC instead of TELRIC.¹⁵⁵ Further, the PAPUC has challenged the district court's final judgment and that appeal is still pending. This is more a matter of semantics than substance since the incremental pricing principles are the same for both -- TSLRIC for "services" and TELRIC for "elements" of a service.

In its decision regarding the Global Order and specifically addressing this position of MCIW, the Commonwealth Court affirmed the PAPUC's UNE rates adopted in the Global Order as lawful. As noted by the Commonwealth Court, in determining UNE incremental costs, based on existing wire centers and the most efficient technology, the PAPUC used a forward-looking long-run basis in determining the MFS - Phase III Order UNE rates and the Global Order rates. The cost components to this determination were: a) the forward-looking costs attributable to each network element, b) the forward-looking costs of capital (i.e. reasonable profit) of the associated investment, and c) an allocation of forward-looking common/joint costs associated with each network element.¹⁵⁶ Since the Global Order rates were determined in accordance with the MFS - Phase III Order cost methodology, which used the factors identified above, but modified certain input factors, the UNE rates in effect in Pennsylvania pursuant to the Global Order are TELRIC-based.

(5) Conclusion

Verizon PA has demonstrated checklist compliance regarding the rates for UNEs set by the PAPUC's Global Order which are contained in Verizon PA's Tariff No. 216.

¹⁵⁵ MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania Inc., No. 97-1857 (M.D. Pa. June 30, 2000), appeal pending, No. 00-2257 (3rd Cir., filed July 28, 2000).

¹⁵⁶ Bell Atlantic-Pennsylvania v. Pa. PUC, 763 A.2d 440, 482-483 (Pa. Cmwlth. 2000).

b. UNEs Priced by PAPUC's Further UNE Pricing Interim Order

(1) Description of Checklist Sub-issue

The PAPUC's Global Order directed Verizon PA to provide unbundled access to certain new network elements. (See Appendix B.) Subsequently, the FCC issued its UNE Remand Order, which requires Verizon PA to unbundle additional network elements.¹⁵⁷ The pricing of all of the above UNEs is the subject of a pending proceeding referred to as the Further UNE Pricing Proceeding.¹⁵⁸ While the PAPUC considers the rates for these UNEs, it allowed Verizon PA's proposed rates to be effective subject to a refund until the conclusion of the UNE pricing proceeding. This proceeding is still on going. An interim opinion and order was adopted by the PAPUC on May 24, 2001, directing that Verizon PA make a compliance filing in accordance with the directives of the interim order. Upon PAPUC review and approval of the compliance filing, those compliance filing rates will be deemed final and permanent.

The issue here is whether the UNE rates being offered on an interim basis by Verizon PA and still under review by the PAPUC are in compliance with section 271(B)(ii). 47 U.S.C.S. § 271(B)(ii).

(1) Standard of Review

It is preferable to analyze a section 271 application on the basis of permanent rates in effect at the direction of the state commission, but a section 271 application that

¹⁵⁷ UNE Remand Order at ¶¶ 163-466 (1999).

¹⁵⁸ Further Pricing of Verizon PA's UNEs, Docket Nos. R-00005261, R-00005261C0001, A-310696F0002, A-310698F0002, P-00991648, P-00991649, and R-00005350C0001, Recommended Decision of ALJ Louis G. Cocheres issued March 22, 2001.

contains interim rates can be allowed. BA NY 271 Order at ¶¶ 256-261. Each such application with interim rates is considered on a case-by-case basis and the FCC will reject an application “only if basic TELRIC principles are violated.” Verizon MA 271 Order at ¶ 20. The factors to be considered include whether the state commission has made reasonable efforts to set interim rates in accordance with federal rules, whether the state commission has a track record of setting other applicable rates at TELRIC levels, and whether the interim rates are subject to true up if the commission determines that they exceed applicable TELRIC-based levels. BA NY 271 Order at ¶¶ 256-261.

(3) Summary of the Evidence Before PAPUC

Verizon PA states that it did not follow the Global Order when it proposed the subject interim rates.¹⁵⁹ Rather, the interim rates identified in Tariff No. 216¹⁶⁰ were calculated by Verizon PA using the methodology as previously set forth in the MFS - Phase III Order without the Global Order modifications to the input factors. Verizon PA claims that the PAPUC’s Global Order did not require Verizon PA to use the MFS - Phase III methodology as modified by the Global Order for UNEs on a going-forward basis.¹⁶¹ Verizon PA indicates that once it is clear about what inputs should be used, those inputs can be put into the cost model and the interim rates can be revised, and Verizon PA assumes that the PAPUC will continue to order TELRIC-compliant rates.¹⁶²

¹⁵⁹ Verizon PA 4/18/01 Comments at 9. Verizon PA’s Resp. Cmr. Brownell En Banc Hearing Data Req. 95, 97-98. 4/25/01 Tr. at 21-23 and 34-35.

¹⁶⁰ Cklist Dec. Att. 203.

¹⁶¹ 4/25/01 Tr. at 22.

¹⁶² Verizon PA 4/19/01 Comments at 10.

Further, Verizon PA states that for UNEs still under consideration by the PAPUC, CLECs are offered a “true-up” mechanism offered in their interconnection agreements.¹⁶³ Thus, according to Verizon PA, when the PAPUC does rule on a rate element, the CLEC will get the benefit of that ruling back to the time the element was first placed in service, if the CLEC opts for the true-up clause in its agreement.

XO, ASCENT, AT&T, Sprint, and Senator White raise concerns regarding Verizon PA’s past compliance with PAPUC orders and argue that Verizon PA must be in compliance with these orders before it can receive a favorable evaluation regarding section 271.¹⁶⁴ As an example, XO cites the concerns raised by the PAPUC’s ALJ regarding Verizon PA’s failure to comply with the Global Order in setting the rates for various UNEs. XO states that Verizon PA’s lack of current compliance with the Global Order puts at issue Verizon PA’s future compliance with PAPUC requirements that are designed to open local telecommunications services markets to full and irreversible competition.

Furthermore, XO, AT&T, and MCIW, and Sprint argue that the computation of the contested UNE rates by Verizon PA has produced UNE rates that are not forward-looking, are beyond TELRIC levels, and do not comply with the PAPUC’s Global Order.¹⁶⁵ XO states that Verizon PA’s failure to use the PAPUC Global Order mandated cost of capital figure in its proposed UNE rates has rendered its rates as not forward-looking because the PAPUC Global Order mandated cost of capital figure operates on a prospective forward-looking basis.¹⁶⁶ Because of Verizon PA’s non-compliance with the

¹⁶³ Cklist Dec. at ¶ 116.

¹⁶⁴ XO 4/18/01 Comments at 7-8; ACE 4/17/01 Br. at 8-10; AT&T 4/18/01 Comments at 64; Sprint/United 4/18/01 Comments at 42; Senator White 4/18/01 Comments at ¶¶ 4-5.

¹⁶⁵ XO 4/18/01 Comments at 11; AT&T 4/18/01 Comments at 14. MCIW 4/18/01 Comments at 6; and Sprint/United 2/12/01 Comments at 29.

¹⁶⁶ XO Resp. to Cmr. Brownell *en banc* hearing Data Req. 1-2.

PAPUC's Global Order in setting these various UNE rates, XO states that it and other CLECs have been incurring great interconnection expenses for more than a year. According to XO, "the patently unjust and unreasonable nature of Verizon PA's UNE rates that are currently in effect constitutes an absolute and insurmountable barrier to VZ-PA's ambitions to enter the interLATA telecommunications services market in this Commonwealth."¹⁶⁷ MCIW supports this position by indicating that competitive entry into the less dense cells, Cells 3 and 4, in Pennsylvania is limited if not outright prohibited economically because of Verizon PA's failure to have TELRIC-compliant UNE rates in place for these areas.¹⁶⁸

Sprint argues that there is no evidentiary support regarding Verizon PA's current rates to determine whether these rates are TELRIC based or in compliance with the Global Order.¹⁶⁹ Therefore, Sprint does not believe Verizon PA has met checklist compliance on this issue.

As discussed above regarding the permanent rates for UNEs currently in place, AT&T and MCIW's position is that there are no TELRIC-compliant rates in Pennsylvania today including the Global Order rates.¹⁷⁰

(4) Discussion

The PAPUC first set UNE rates in August of 1997 with its MFS - Phase III Order. In that order, the PAPUC expressly stated that it would institute an investigation one year

¹⁶⁷ (Emphasis in original.) XO 4/18/01 Comments at 12.

¹⁶⁸ MCIW 4/18/01 Comments at 6.

¹⁶⁹ Sprint/United Resp. to Cmr. Brownell *en banc* hearing Data Req. 2. See also Sprint/United 2/12/02 Comments at 29.

¹⁷⁰ AT&T 4/18/01 Comments at 12. MCIW Resp. to Cmr. Brownell Interrogatory No. 1. See also AT&T Resp. to Cmr. Brownell Interrogatory Nos. 1-2.

after the entry date of the order the MFS - Phase III Order for the purpose of reexamining the UNE rates to ascertain their viability. Ordering paragraph 14. This investigation was instituted in July of 1998, and it became a part of the Global Order proceeding. In the Global Order, the PAPUC revised the MFS - Phase III Order UNE rates by using the MFS - Phase III Order methodology but changing certain inputs.¹⁷¹ The PAPUC also directed Verizon PA to calculate rates for certain further UNEs that remained unpriced in the Global Order using the MFS - PHASE III methodology, as modified by the Global Order.¹⁷² As determined by the PAPUC's May 24, 2001 Further UNE Pricing Interim Order, Verizon PA did not follow this directive as to the UNEs that were left unpriced in the Global Order.¹⁷³ We have since directed Verizon PA to file new rates consistent with our May 24, 2001 Order. Such rates are based on our decisions in the Global Order and, as explained above, will be TELRIC-compliant rates.

The commenters' assertion that the Global Order rates are not TELRIC-based is incorrect. As noted by the Commonwealth Court, in determining UNE incremental costs, based on existing wire centers and the most efficient technology, the PAPUC used a forward-looking long-run basis in determining the MFS - Phase III Order UNE rates and the Global Order rates. The cost components to this determination were a) the forward-looking costs attributable to each network element, b) the forward-looking costs of capital (i.e. reasonable profit) of the associated investment, and c) an allocation of forward-looking common/joint costs associated with each network element.¹⁷⁴ Since the Global Order rates were determined in accordance with the MFS - Phase III Order methodology which used the factors identified above, all the UNE rates in effect in Pennsylvania which are based on the Global Order are TELRIC-based.

¹⁷¹ Global Order at 73.

¹⁷² Global Order at 83.

¹⁷³ Further UNE Pricing Interim Order at 14.

¹⁷⁴ Id. at 482-83.

However, as noted by the commenters, for various UNEs Verizon PA did not have Global Order UNE rates in effect. Verizon PA takes the position that because the PAPUC has ordered TELRIC-compliant rates in the past, it will continue to order TELRIC-compliant rates in the future.¹⁷⁵ If, therefore, the PAPUC were to order Verizon PA to change its current rates, Verizon PA states that it will comply with this directive. Given that the PAPUC has ruled in the May 24, 2001 Further UNE Order, that Verizon must re-run its cost studies in accordance with the MFS - Phase III inputs as modified by the Global Order, we anticipate that Verizon's compliance filing will yield TELRIC-based rates using the appropriate cost input factors.

(5) Conclusion

Verizon PA meets checklist compliance on this issue because the PAPUC has established TELRIC-compliant rates for the subject UNEs in both the Global Order and most recently in the Further UNE Pricing Interim Order.

2. Access to UNEs

Pursuant to section 271(B)(ii), Verizon PA is required to provide nondiscriminatory access to network elements. 47 U.S.C.S. § 271(B)(ii). Verizon PA must provide any CLEC with access to UNEs at any technically feasible point and must allow CLECs to combine these elements to provide telecommunication service. 47 U.S.C.S. § 252(c)(3). The FCC has stated that the ability of requesting carriers to use UNEs, as well as combinations of UNEs, is integral to achieving Congress' objective of promoting competition in local telecommunications markets. According to the FCC's UNE Remand Order, Verizon PA is required to offer the following UNEs: Loops, Subloops, Network Interface Device ("NID"), Circuit Switching, Packet Switching,

¹⁷⁵ Verizon PA 4/18/01 Comments at 10.

Interoffice Transmission Facilities, unbundled access to shared transport where unbundled local circuit switching is provided, Signaling and Call Related Databases, work with requesting CLECs to reconfigure the network to create a single point of interconnection.¹⁷⁶ UNEs offered by Verizon PA in Pennsylvania are identified in its Tariff No. 216.¹⁷⁷

a. Port

MCIW and other CLECs raised concerns about the availability of a lower priced port as a part of a UNE-P. The issue here is whether or not this port is being offered in compliance with federal law. This issue is comprehensively addressed under Checklist item 6.

Verizon PA has met checklist compliance on this issue.

b. Operator Services and Directory Assistance

(1) Description of Checklist Sub-issue

This inquiry addresses CLEC access to Verizon PA's operator services and data bases ("OS/DA").

(2) Standard of Review

The FCC originally concluded that BOCs must provide OS/DA on an unbundled basis pursuant to sections 251 and 252, but the FCC removed OS/DA from the

¹⁷⁶ UNE Remand Order at ¶¶ 163-466.

¹⁷⁷ Cklist Dec. Att. 203.

list of required UNEs in the UNE Remand Order. While the FCC, in its UNE Remand Order, announced that ILECs were not required to provide unbundled access to OS/DA, the FCC imposed specific conditions on this modification of its earlier position. The FCC stated that if the incumbent LECs do not have accommodated technologies used for customized routing, it should offer OS/DA as a UNE. UNE Remand Order ¶¶ 442-464.

(3) Summary of the Evidence Before PAPUC

Verizon PA does not believe it is necessary to offer OS/DA as a UNE since it offers customized routing to CLECs to access OS/DA services. Verizon PA also claims that in Massachusetts and New York, it offers customized routing using dedicated transport, where the FCC has granted long distance relief.¹⁷⁸

MCIW has an existing interconnection agreement with Verizon PA that provides for OS/DA with UNE-P. Nevertheless, MCIW argues that the availability of OS/DA with UNE-P at appropriate rates will not survive expiration of the agreement because, but for the interconnection agreement, Verizon PA's position is that it does not have a legal obligation to unbundle OS/DA with UNE-P. MCIW counters that Verizon PA must provide OS/DA as an UNE at TELRIC rates since it does not offer customized routing that allows MCIW to use Feature Group D signaling.

(4) Discussion

While the FCC in its UNE Remand Order, announced that ILECs were not required to provide unbundled access to OS/DA, the FCC imposed specific conditions on this modification. The FCC required ILECs to offer OS/DA as an UNE, to the extent they have not accommodated technologies used for customized routing. Verizon PA

¹⁷⁸ Verizon PA 4/18/01 Comments at 43.

currently offers OS/DA services to MCIW under its existing interconnection agreement that provides for OS/DA with UNE-P, the terms of which would have to be renegotiated at the expiration of the agreement. Verizon PA currently offers OS/DA using Modified Operator Service Signaling (“MOSS”) protocol for customized routing which is not compatible with MCIW’s preferred Feature Group D signaling protocol. As such, consistent with the FCC requirements, the PAPUC has Ordered in Further UNE Pricing Interim Order at Docket No. R-00005261, that inasmuch as Verizon PA does not have accommodated technologies which would allow CLECs to utilize Verizon PA’s customized routing, it should offer OS/DA as an UNE.

The PAPUC in the above order also required Verizon PA to offer OS/DA as an UNE until such time it develop technical solutions which allows it to provide customized routing, via a compatible signaling. Consequently, Verizon PA is required to file tariff revisions to its Tariff 216 in order to reinstate its offering of OS/DA as an UNE in Pennsylvania.

(5) Conclusion

In light of the PAPUC’s Further UNE Pricing Interim Order at Docket No. R-00005261, Verizon PA has an obligation to provide OS/DA as an UNE. The PAPUC expects Verizon PA to comply with its obligations by reinstating OS/DA as an UNE in Pennsylvania. Accordingly, Verizon PA has met compliance on this Checklist item 2 sub-issue.

c. Loops and Subloops

Pursuant to the FCC’s UNE Remand Order, Verizon PA is required to offer unbundled access to loops and subloops, or portions of the loop, at any accessible point.

UNE Remand Order ¶¶ 163-230. This issue is comprehensively addressed under Checklist item 4.

Verizon PA has met checklist compliance on this issue.

d. Dark Fiber

Pursuant to the FCC's UNE Remand Order, Verizon PA is required to offer access to dark fiber by offering unbundled access to the loop and the interoffice transmission facilities. UNE Remand Order ¶¶ 163-202, 319-380. This issue is comprehensively addressed under Checklist item 5.

Verizon PA has met checklist compliance on this issue.

e. Digital Subscriber Line Access Multiplexer

(1) Description of Checklist Sub-issue

According to the UNE Remand Order, the FCC identified packet switching as a UNE. Packet switching is the function of routing individual data units, or "packets," based on address or other routing information contained in the packets. UNE Remand Order ¶ 304. A component of the packet switching functionality is the Digital Subscriber Line Access Multiplexer ("DSLAM"). The DSLAM is included in the FCC's definition of packet switching and it splits voice and data signals carried over a copper twisted pair. UNE Remand Order ¶ 303-304.

Verizon PA is generally not required to unbundle the packet switching functionality because the equipment needed to provide these advanced services, such as DSLAMs, is available on the open market at comparable prices to incumbents and requesting carriers alike. UNE Remand Order ¶ 306, 308. However, Verizon PA

must provide access to requesting carriers in situations where it has placed its DSLAM in a remote terminal. UNE Remand Order ¶ 313. The only way Verizon PA can be relieved of this obligation is if it permits a requesting carrier to collocate its DSLAM in its remote terminal, on the same terms and conditions that apply to its DSLAM. Verizon PA cannot unreasonably limit the deployment of alternative technologies when requesting carriers seek to collocate their own DSLAMs at the remote terminal. The issue here is whether Verizon PA provides unbundled access to its DSLAMs as required by federal law.

(2) Standard of Review

Pursuant to section 271(B)(ii), Verizon PA is required to provide nondiscriminatory access to network elements. 47 U.S.C.S. § 271(B)(ii). Verizon PA must provide any CLEC with access to UNEs at any technically feasible point and must allow CLECs to combine these elements to provide telecommunication service. 47 U.S.C.S. § 252(c)(3).

(3) Summary of the Evidence Before PAPUC

Verizon PA allows CLECs to collocate their DSLAMs at or near the remote terminal, where such space is available and it is technically feasible to do so.¹⁷⁹ OCA believes that CLECs should be able to purchase unbundled DSLAMs from Verizon PA and that Verizon PA should take the steps necessary to request DSLAM equipment vendors to develop multi-hosting DSLAMs.¹⁸⁰

¹⁷⁹ Verizon PA 4/18/01 at 36.

¹⁸⁰ OCA 4/18/01 Comments at 27.

Further, OCA states that the PAPUC's Global Order ordered Verizon PA to provide multi-hosting DSLAMs through its Tariff 216 once certain technical impediments were resolved by the industry. Global Order at 108. OCA states that Verizon PA is required to actively seek resolution of these impediments but it is not doing so. All industry participants agree that these technical impediments have not yet been resolved.¹⁸¹

(4) Discussion

In terms of unbundled access to DSLAMs, no evidence has been presented for our review in this case demonstrating that Verizon PA has unreasonably limited the deployment of alternative technologies. Moreover, Verizon PA has a tariff permitting collocation of DSLAMs at remote terminals, at rates, terms and conditions that were revised in our Further UNE Pricing Order entered June 8, 2001.

We note that the PAPUC shall convene a collaborative to address the design and deployment of fiber, Next Generation Digital Line Carrier ("NGDLC"), and equal access to DSL over fiber. The results of the collaborative are scheduled to be submitted no later than September 30, 2001. Functional/Structural Separation Order at Ordering Paragraph 11. The PAPUC expects the collaborative will address access to DSLAMS at remote terminals.

(5) Conclusion

Verizon PA has met compliance on this Checklist item 2 sub-issue.

¹⁸¹ 4/25/01 Tr. at 56.

3. UNE Combinations

The FCC has stated that using combinations of UNEs provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market. Moreover, combining the incumbent's UNEs with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices. BA NY 271 Order at ¶ 230. In determining if UNE combinations are available in Pennsylvania, we have analyzed and looked at the availability of EELs to CLECs in light of termination liabilities, we have analyzed the ability of CLECs to commingle EELs and Special Access Circuits ("SACs") on the same facilities, and we have inquired about the ability of CLECs in Pennsylvania to use non-collocation methods for combining UNEs.

a. Effect of Termination Liabilities on UNE-P Availability

(1) Description of Checklist Sub-issue

An EEL is a UNE combination of a loop and interoffice transport. An EEL enables a CLEC to provide service to a customer served out of one Verizon PA central office using equipment a CLEC has collocated in another Verizon PA central office. Because of this, if CLECs can obtain EELs from Verizon PA, they do not need to collocate in every Verizon PA central office to be able to access unbundled loops.¹⁸² Charges for the EEL are the sum of the individual UNE rates that make up the EEL.¹⁸³ 2/27/01 Tr. at 35-36. Before EELs were available in Pennsylvania in 1999, SACs were

¹⁸² XO 2/23/01 Comments at 6-7.

¹⁸³ According to Cklist Dec. at ¶ 113, EEL arrangements are comprised of the following UNEs: (1) UNE loops (2/4-wire analog, 2-wire digital ISDN, 4-wire digital DS-0 57 Kbps, 4-wire digital 1.5 Mbps, 4-wire digital 45 Mbps), (2) with transport (voice grade/DS-0, DS-1, DS-3); or (3) with or without multiplexing (DS-3 to DS-1, DS1 to DS-0).

used by CLECs and SACs have been available to CLECs in Pennsylvania since 1984. 2/21/01 Tr. at 40. Many SACs were purchased from Verizon PA on long-term contracts that contain termination liability clauses.¹⁸⁴ The issue whether the termination liabilities charged by Verizon PA and assessed against CLECs wanting to cancel their SAC contracts to convert to EELs is creating an unreasonable impediment to CLECs who want access to the EEL UNE combinations.

(2) Standard of Review

In analyzing the pricing of UNEs, the FCC has consistently maintained that it does not look at the profitability argument when determining if rates are reasonable. BA NY 271 Order at ¶ 49. Further, the FCC has acknowledged that the conversion from SACs to EELs requires the CLEC to pay any appropriate termination penalties required by the contract.¹⁸⁵

(3) Summary of the Evidence Before PAPUC

XO's position is that Verizon PA's termination liabilities are unreasonable and that they hinder XO's ability to have access to this combination of UNEs. XO's Comments at 8. First, XO is continuing to use and pay for Verizon PA's facilities after the conversion so no termination has occurred. Second, XO is using the SACs under contract with Verizon PA because Verizon PA had previously refused to make the EELs available as a UNE and XO should not be penalized for this.

¹⁸⁴ Global Order at 91. In an order released on June 2, 2000, the FCC reaffirmed its prior temporary restraint on the ability of CLECs to convert to EELs. This conversion is only permitted where the CLEC provides "a significant amount of local exchange service, in addition to exchange access service, to a particular customer." In the Matter of Implementation of the Local Competition Provisions of TA-96, Supplemental Order Clarification, CC Docket No. 96-98, 15 FCC Rcd 9587 at ¶ 8 (2000). ("Supplemental UNE Clarification Order").

¹⁸⁵ UNE Remand Order at fn. 985.